

APPEAL NO. 020224  
FILED MARCH 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on December 4, 2001. This hearing considered the claim with (docket 1) wherein respondent (carrier 1) is the carrier and the claim with (docket 2) wherein respondent (carrier 2) is the carrier. Consequently, this decision covers both claims, and both appeals. The appellant (claimant) has filed one appeal for both cases.

In case of docket 1, the sole issue was whether the claimant's cervical problems on or after \_\_\_\_\_, are the result of the \_\_\_\_\_, compensable injury. The hearing officer determined that the claimant's cervical symptoms are a continuation and worsening of her symptoms from her \_\_\_\_\_, compensable injury. The claimant appeals this determination, arguing that the great weight and preponderance of the evidence establishes that the accident of \_\_\_\_\_, when a window blind assembly fell on her left hand at work and caused a new injury by the enhancement, acceleration, or worsening of the \_\_\_\_\_, cervical injury. Carrier 1 replies that the hearing officer's decision is sufficiently supported by the evidence and should be affirmed.

In the case of docket 2, the issues were whether carrier 2 waived the right to dispute compensability of the claimed injury by not contesting the injury in accordance with Section 409.021; whether the claimant sustained a compensable injury on \_\_\_\_\_; whether carrier 2 specifically contested compensability pursuant to Section 409.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 124.2 (Rule 124.2); and, whether the claimant had disability resulting from the injury sustained on \_\_\_\_\_, and, if so, for what period(s). The hearing officer determined that carrier 2 did not waive the right to dispute compensability of the claimed injury by not contesting the injury in accordance with Section 409.022; that the claimant did not sustain a compensable injury on \_\_\_\_\_; that carrier 2 specifically contested compensability pursuant to Section 409.022 and Rule 124.2; and that because the claimant did not sustain a compensable injury, she did not have disability. The claimant appealed, arguing essentially that the hearing officer's determinations are against the great weight and preponderance of the evidence. Carrier 2 replied that the hearing officer's decision is sufficiently supported by the evidence and should be affirmed.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, lifting a ladder and injuring her right arm, right shoulder, and neck, and that on that date the employer had workers' compensation insurance with carrier 1. We note that these facts were stipulated and that the decision erroneously states the stipulated date of \_\_\_\_\_, instead of \_\_\_\_\_. The medical reports in evidence reflect that the

claimant was diagnosed with carpal and cubital tunnel syndrome following the \_\_\_\_\_, accident. The claimant testified that she had a history of migraine headaches; that she has had prior neck problems since 1992; that she had cubital tunnel syndrome in her right elbow; that she had surgery to her right arm; and that she was on pain medication for cervical and migraine problems. The claimant further testified that on \_\_\_\_\_, while at work, she pulled the cord of a window blind assembly and it fell, striking her left hand, and that she did not seek medical treatment for her left hand because she was building a new house, and taking care of her children. The claimant stated that in November and December 2000, she began to have increased migraine headaches and pain to her back and right arm and attributed the pain to the stress of building a new house and the holiday season, and that she reported her \_\_\_\_\_, injury on February 6, 2001, after pain in her neck increased. The medical reports including numerous diagnostic tests reflect that the claimant has had significant cervical problems since 1992. The claimant contends that the \_\_\_\_\_, injury was not a continuation of the March 27, 1992, injury, but rather that she sustained a new injury on \_\_\_\_\_.

Concerning docket 1, the hearing officer did not err in finding that the claimant's cervical problems on or after \_\_\_\_\_, are a continuation and worsening of her symptoms from her \_\_\_\_\_, compensable injury and that she did not suffer any aggravation, acceleration, or enhancement of her cervical symptoms as a result of the \_\_\_\_\_, incident. Whether the claimant sustained the alleged injuries to her right arm as a result of the work-related incident on \_\_\_\_\_, was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000. The hearing officer commented that the medical records in evidence did not indicate that the incident of \_\_\_\_\_, aggravated, accelerated, or enhanced the claimant's symptoms, but rather the evidence reflected that the claimant had a longstanding, significant cervical disc problem that had progressively worsened since 1992. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Concerning docket 2, the hearing officer did not err in determining the compensability and disability issues. As noted, the hearing officer was not persuaded by the medical reports in evidence that the claimant sustained a new compensable injury on \_\_\_\_\_. Since the claimant did not sustain a compensable injury on \_\_\_\_\_, it follows that she did not have disability. Section 401.011(16).

The hearing officer did not err in determining that carrier 2 did not waive the right to dispute compensability of the claimed injury by not contesting the injury in accordance with Section 409.022; and that carrier 2 specifically contested compensability pursuant to Section 409.022 and Rule 124.2. The hearing officer found that carrier 2 (became aware)

of the claimant's workers' compensation claim on February 12, 2001, and filed a Payment of Compensation or Notice of Refused/Dispute Claim (TWCC-21) on February 21, 2001. The TWCC-21 stated that the "carrier denies claim in its entirety....[and that the claimant] did not sustain injury in course and scope of employment." The evidence sufficiently supports the hearing officer's finding that the "carrier used specific and plain language which was sufficient to place the claimant on notice as to the reason the carrier was disputing the claimed injury." In Texas Workers' Compensation Commission Appeal No. 93326, decided June 10, 1993, the Appeals Panel stated that we would look to a fair reading of the reasons listed to determine if the notice of refusal or denial is sufficient and, in so doing, compare the language in the case under consideration to similar language in previous decisions. In our opinion, a fair reading of the carrier's dispute language in its TWCC-21 is that it is basing its denial of compensability entirely on the contention that the claimed injury was not sustained in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 931148, decided February 1, 1994. See Texas Workers' Compensation Commission Appeal No. 950340, decided April 10, 1995 (Unpublished).

We note that the claimant has attached to her request for review certain documents related to cervical spine surgery and dated December 1, 2001, which were not in evidence at the hearing. The Appeals Panel does not generally consider evidence offered for the first time on appeal and we find no basis for doing so in this case. Texas Workers' Compensation Commission Appeal No. 950331, decided April 18, 1995.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier 1 is **HARTFORD CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS  
45 GEARS ROAD  
SUITE 500  
HOUSTON, TEXAS 77067.**

The true corporate name of the insurance carrier 2 is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS  
45 GEARS ROAD  
SUITE 500  
HOUSTON, TEXAS 77067.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge